IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 176 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIBERTY CINEMA A PATNERSHIP FIRM - Appellant(s)
Versus
THE STATE OF GUJARAT THRO'THE CHIEF SECRETORY & 1 - Defendant(s)

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Appearance :

MR MEHUL S SHAH for Appellant
MR AY KOGJE, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/12/2006

ORAL JUDGMENT

1. The plaintiff, a partnership firm, carrying on business of exhibiting cinematographic films and

motion pictures, was regularly exhibiting films. On 11.2.76, vide Notification No. SFC/1075-76/guj-Studio/VC/F, issued by the Directorate of Information, Government of Gujarat, a film [entitled as “Vir Champrajvalo”] was exempted from payment of entertainment duty subject to certain conditions. The condition no. 1 of the notification read as under:-

“1. That the existing admission rates excluding the amount of entertainment duty should not be increased and that the existing rates of admission fee is reduced by the amount of exemption given.”

2. Clear intention of the government was that the owner of the Auditorium/Talkies should not enhance the rates of admission and if that condition is maintained, the exemption from the entertainment duty would be available.
3. The petitioner was exhibiting the film from 6th February, 1976 and continued to exhibit the film till 26.2.76. It is to be noted that admission

rates prior to 9.2.76 for balcony and Third Class were as under:-

""1. Balcony	Rs.1.24 ps.	Net admission fee
	0.76 ps.	Entertainment duty

Total	Rs. 2.00 ps.	
2. Third Class	Rs.00.47 ps.	Net admission fee
+	00.23 ps.	Entertainment duty

	Rs.00.70"	

With effect from 9.2.76, the appellant enhanced and applied the following rates.

"1. Balcony	Rs.1.29 net.	
	0.81 tax.	

Total	Rs. 2.10 ps.	
2. Third Class	Rs.00.67 ps.	net.
+	00.30 ps.	Tax.

	Rs. 1.00"	

4. After receiving the information that the petitioner had enhanced the rates of admission, the State Government issued notices to the petitioner vide exh.36 to show cause that why loss of entertainment duty be not recovered from him. Thereafter, the State Government through

the competent authority issued notice for demand-cum-recovery observing inter alia that the petitioner having committed breach of the exemption notification, was not entitled to the benefits flowing from the said notification dated 11.2.76.

5. The plaintiff being aggrieved by the said action of the State Government filed Regular Civil Suit No. 17 of 1979 in the court of the learned Civil Judge [Senior Division], Gondal, the said suit came to be dismissed on 1.5.82 by the learned Judge, being aggrieved by the judgment and decree, the plaintiff preferred Regular Civil Appeal No. 49 of 1982 which was heard and dismissed by the learned 3rd Extra Assistant Judge on 17th August, 1989. The plaintiff now is before this Court.

6. At the time of admission, the following substantial question of law has been framed:-

> “Can the term “special order” occurring in Section 6[3] of the Bombay Etnertainments Duty Act, 1923 be construed as empowering

the State Government to impose conditions while granting exemption from liability to entertainments duty?”

7. Learned counsel for the appellant submits that a fair reading and understanding of Section 6[3] of the Bombay Entertainment Duty and Advertisements Act, 1923 would clearly show that the State Government can exempt any entertainment or class of entertainments from liability to entertainments duty by making a general order or special order. He submits that if the law does not say that any conditional order can be issued, then under the circumstances, the conditions introduced in the exemption order cannot be enforced.

8. Placing reliance upon Section 29 of the Gujarat Entertainments Tax Act, 1977, it is submitted that operation of the two Acts would clearly show that the government has now allowed the authorities to grant exemption subject to such conditions as may be specified in the notification. He submits that if the government,

in the new Act has observed that certain conditions can be imposed, then the appellant would be justified in presuming that under the old Section 6[3], the government was not entitled impose any conditions.

9. Shri A.Y. Kogje, learned counsel for the State, on the other side submits that there cannot be any comparison of Section 6 of the Bombay Act with Section 29 of the Gujarat Act. He also submits that the plaintiff, if wanted to claim certain exemption under the notification, then he was obliged to observe the notification and would not be permitted to challenge the validity of the notification after taking advantage under the notification.

10. True it is that Section 29 of the Gujarat Entertainments Act, 1977 provides that the State Government may, by notification in the official gazette, exempt either wholly or partly any entertainment or class of entertainments from payment of tax, subject to such conditions as may be specified therein. But it is not mentioned in Sec.29 that inclusion or imposition

of conditions in the notification to be issued under Section 29 of the Gujarat Act would mean that the government could not exercise such powers under Section 6[3] of the Bombay Act. The moment it is held that the competent government, by general or special order could grant exemption, then it is to be held that such government shall always have powers to impose conditions in such exemption orders. Grant of exemption is a grace shown by the government and is not a right to be exercised by the party drawing benefit under the exemption notification. Section 6 if is construed harmoniously and read in its true perspective, would make clear that the government has the power to issue general orders or special orders and Section 6[3] does not say that the government would not be entitled to impose any condition in the order granting exemption.

11. It is also to be seen that the plaintiff was exhibiting the film right from 6th February, 1976 and the notification came to be issued on 11.2.1976. For the first five days i.e. 6th,

7th, 8th, 9th, and 10th of February, 1976, the plaintiff, in absence of any notification must have charged entertainment duty from all concerned, because, he otherwise was not entitled to allow admission to anybody in entertainment joint on payment of the fees only and without payment of the duties, so far as that period is concerned, the plaintiff when has recovered the duty amount, he would be obliged to pay to the government for whom he had recovered.

12. It is also to be seen that the plaintiff did not challenge the notification from the date it was brought into force. The plaintiff says that the cause of action would accrue in his favour only on issuance of the notice to show cause or when the notice for recovery was issued against him. According to him, on 11.2.76, or immediately thereafter, there was no reason for him to challenge the notification.

13. In the opinion of this Court, if the plaintiff wanted to exercise his right, flowing from the exemption notification, then he was obliged to

observe and was bound by the said notification.

14. In the opinion of this Court, the State Government was justified in holding that the plaintiff having committed breach of condition no.1 of the exemption notification, made itself liable to pay the entertainment duty to which he was entitled to exemption.

15. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs.

16. Let a decree be framed accordingly.

[R.S. GARG, J.]

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